

No. 12-1900 BN

1. On February 29, 2012, Richmond applied for licensure as an RN. Her date of birth is January 2, 1990.
2. On May 5, 2012 Richmond received an associate's degree in nursing from Columbia College.

3. On August 30, 2012, the Board issued an order granting Richmond the right to sit for the registered nurse licensure examination administered by the National Council of State Boards of Nursing (“NCLEX”). This order became effective on the date the Board received information from NCLEX of Richmond’s passing score. Upon this effective date, the Board issued Richmond a license to practice as an RN, subject to probation for a period of two years with specific terms and conditions.

4. On October 1, 2012, the Board received information from NCLEX of Richmond’s passing score, and the order went into effect.

5. On October 26, 2008, Richmond attempted to damage a patrol vehicle owned by the Dent County Sherriff’s Department by throwing a cell phone at the window of the vehicle. On August 28, 2009, in the Circuit Court of Crawford County, Richmond pled guilty to the Class C misdemeanor of attempted property damage in the second degree<sup>1</sup> for this conduct.

6. On December 20, 2010, Richmond damaged a telephone owned by Boone County by striking the base of the telephone with the receiver thereby breaking the wall mount. On May 27, 2011, in the Circuit Court of Boone County, Richmond pled guilty to the Class B misdemeanor of property damage in the second degree<sup>2</sup> for this conduct.

7. Both of these incidents occurred while Richmond was intoxicated.

8. Since the incident in Boone County in December 2010, Richmond consumes only one or two alcoholic beverages per month at social events.

### **Conclusions of Law**

We have jurisdiction to hear this complaint.<sup>3</sup> The applicant has the burden to show that he or she is entitled to licensure.<sup>4</sup> When an applicant for licensure files a complaint, the agency’s

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<sup>1</sup> Section 569.120. Statutory references are to RSMo 2000 unless otherwise noted.

<sup>2</sup> Section 569.120.

<sup>3</sup> Section 621.045, RSMo. Supp. 2012.

<sup>4</sup> Section 621.120.

answer provides notice of the grounds for denial of the application.<sup>5</sup> We decide the issue that was before the Board, which is the application.<sup>6</sup> We exercise the same authority that has been granted to the Board.<sup>7</sup> Therefore, we simply decide the application de novo.<sup>8</sup>

In its answer, the Board asserts there is cause to deny Richmond a license under §§ 335.046.1 and 335.066.1 and .2(2).<sup>9</sup>

Section 335.046.1 provides that “[t]he applicant shall be of good moral character[.]”

Section 335.066 provides:

1. The board may refuse to issue or reinstate any certificate of registration or authority, permit or license required pursuant to chapter 335 for one or any combination of causes stated in subsection 2 of this section or the board may, as a condition to issuing or reinstating any such permit or license, require a person to submit himself or herself for identification, intervention, treatment, or rehabilitation by the impaired nurse program as provided in section 335.067. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

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(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an essential

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<sup>5</sup> *Ballew v. Ainsworth*, 670 S.W.2d 94, 103 (Mo.App. E.D. 1984).

<sup>6</sup> *Department of Soc. Servs. v. Mellas*, 220 S.W.3d 778 (Mo.App. W.D. 2007).

<sup>7</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20 (Mo. banc 1990).

<sup>8</sup> *State Bd. of Regis’n. for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo.App. K.C.D. 1974).

<sup>9</sup> RSMo Supp. 2012.

element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

Rather than deny Richmond a license, the Board may issue Richmond a license subject to probation under § 324.038.1,<sup>10</sup> which provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

### I. Good Moral Character

Section 335.046.1 requires an applicant for a nursing license to be of good moral character. “Good moral character” is honesty, fairness, and respect for the rights of others and for the laws of the state and nation.<sup>11</sup> Richmond pled guilty to the crimes of property damage and attempted property damage. These crimes demonstrate a lack of respect for the rights of others and for the law, and therefore demonstrate a lack of good moral character.

We must judge Richmond’s moral character as it was at the time of the hearing.<sup>12</sup> Richmond admitted her past criminal acts on her application for licensure. The most recent criminal act occurred more than two years ago. In her complaint and in her testimony at the hearing, Richmond did not appear to accept full responsibility for her actions and downplayed the seriousness of her offenses. In a February 12, 2012 letter to the Board, Richmond admitted that she “has had dependency issues with alcohol” and stated that she has “made some major lifestyle changes.”<sup>13</sup> While we are concerned that Richmond might not have a realistic view of

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<sup>10</sup> RSMo Supp. 2012.

<sup>11</sup> *Hernandez v. State Bd. of Regis’n. for the Healing Arts*, 936 S.W.2d 894, 899 n.1 (Mo.App. W.D. 1997).

<sup>12</sup> *Missouri Real Estate Appraisers Commission v. Funk*, WD71027 (Jan. 12, 2010).

<sup>13</sup> Exhibit A.

whether she has a problem with alcohol, this is not the same as a lack of good moral character. Moreover, we recognize the progress she has made. We find she has met her burden to show that she possesses good moral character.

## II. Guilty Pleas

Because the Board limited its allegations of cause for issuing Richmond a probated license under this statute to an offense related to the qualifications of an RN, we limit our analysis to this issue. Specifically, the Board alleges that good moral character is a qualification for an RN.

Good moral character is a qualification that is required for nursing applicants.<sup>14</sup> Richmond pled guilty to the offenses of property damage and attempted property damage. We have already found that these offenses demonstrate a lack of good moral character. Moreover, under this prong of the statute, we assess whether the *offenses* were reasonably related to a lack of good moral character, not whether the applicant presently lacks good moral character. We find that the offenses are so related. Accordingly, find there is cause for denial for pleading guilty to crimes reasonably related to the qualifications for licensure.

## III. Denial/Probation

There is cause to deny Richmond a license under §§ 335.066.1 and 335.066.2(2). There is cause to issue her a license subject to probation under § 324.038.1.

## IV. Our Discretion

Richmond asserts that her probationary status has substantially limited her ability to find a position as an RN and that the Board's terms and conditions impose a financial hardship. She asks us to use our discretion and issue her a license free of probation. The Board, on the other hand, is charged with protecting the public and asks us to uphold its probation. We must weigh

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<sup>14</sup> Section 335.046.1.

the Board's responsibility with Richmond's situation. We understand that Richmond's legal problems occurred more than two years ago, before she was 21. She has changed her lifestyle, refrained from further issues with the law, and successfully taken on the responsibility of nursing school. However, she has not demonstrated that she has taken full control of her problem with alcohol. Monitoring by the Board is appropriate.

### **Summary**

We grant Richmond an RN license, subject to the terms of probation set forth by the Board.

SO ORDERED on June 17, 2013.

*\s\ Sreenivasa Rao Dandamudi*  
SREENIVASA RAO DANDAMUDI  
Commissioner